

House Study Bill 680

SENATE/HOUSE FILE _____
BY (PROPOSED ATTORNEY
GENERAL BILL)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to requiring certain persons to submit a DNA
2 sample for DNA profiling, authorizing a fee, providing a
3 penalty, and providing effective and contingent effective
4 dates.
5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
6 TLSB 5220DP 80
7 jm/sh/8

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1 1 DIVISION I
1 2 Section 1. NEW SECTION. 81.1 DEFINITIONS.
1 3 As used in this chapter, unless the context otherwise
1 4 requires:
1 5 1. "DNA" means deoxyribonucleic acid.
1 6 2. "DNA databank" means the repository for DNA samples
1 7 obtained pursuant to section 81.4.
1 8 3. "DNA database" means the collection of DNA profiles and
1 9 DNA records.
1 10 4. "DNA profile" means the objective form of the results
1 11 of DNA analysis performed on a DNA sample. The results of all
1 12 DNA identification analysis on an individual's DNA sample are
1 13 also collectively referred to as the DNA profile of an
1 14 individual.
1 15 5. "DNA profiling" means the procedure established by the
1 16 division of criminal investigation, department of public
1 17 safety, for determining a person's genetic identity.
1 18 6. "DNA record" means the objective form of the results
1 19 obtained from the DNA analysis.
1 20 7. "DNA sample" means a biological sample provided by any
1 21 person required to submit a DNA sample or a DNA sample
1 22 submitted for any other purpose under section 81.4.
1 23 8. "Person required to submit a DNA sample" means a person
1 24 convicted, adjudicated delinquent, or found not guilty by
1 25 reason of insanity of an offense requiring DNA profiling
1 26 pursuant to section 81.2. "Person required to submit a DNA
1 27 sample" also means a person determined to be a sexually
1 28 violent predator pursuant to section 229A.7.
1 29 Sec. 2. NEW SECTION. 81.2 PERSONS REQUIRED TO SUBMIT A
1 30 DNA SAMPLE.
1 31 1. The attorney general shall adopt rules in consultation
1 32 with the division of criminal investigation, department of
1 33 public safety, for the purpose of classifying felonies and
1 34 indictable misdemeanors which shall require the offender to
1 35 submit a DNA sample for DNA profiling upon confinement in or
2 1 prior to release from a county jail, upon commitment to the
2 2 custody of the director of the department of corrections, or
2 3 prior to discharge of sentence, or as a condition of
2 4 probation. Factors to be considered shall include the
2 5 deterrent effect of DNA profiling, the likelihood of repeated
2 6 violations, and the seriousness of the offense. The offenses
2 7 that require the offender to submit a DNA sample for DNA
2 8 profiling shall include but are not limited to the following:
2 9 a. Murder in violation of section 707.2 or 707.3.
2 10 b. Attempt to commit murder in violation of section
2 11 707.11.
2 12 c. Kidnapping in violation of section 710.1, 710.2, or
2 13 710.3.
2 14 d. Sexual abuse in violation of section 709.2, 709.3, or
2 15 709.4.
2 16 e. Assault with intent to commit sexual abuse in violation
2 17 of section 709.11.
2 18 f. Assault while participating in a felony in violation of
2 19 section 708.3.
2 20 g. Burglary in the first degree in violation of section
2 21 713.3.

2 22 2. A person determined to be a sexually violent predator
2 23 pursuant to chapter 229A shall be required to submit a DNA
2 24 sample for DNA profiling pursuant to section 81.4 prior to
2 25 discharge or placement in a transitional release program.

2 26 3. A person found not guilty by reason of insanity of an
2 27 offense that requires DNA profiling shall be required to
2 28 submit a DNA sample for DNA profiling pursuant to section 81.4
2 29 as part of the person's treatment management program.

2 30 4. A juvenile adjudicated delinquent of an offense that
2 31 requires DNA profiling of an adult offender shall be required
2 32 to submit a DNA sample for DNA profiling pursuant to section
2 33 81.4 as part of the disposition of the juvenile's case.

2 34 5. An offender placed on probation and assigned to a
2 35 judicial district department of correctional services shall
3 1 immediately report to the judicial district after sentencing
3 2 so it can be determined if the offender has been convicted of
3 3 an offense requiring DNA profiling. If it is determined by
3 4 the judicial district that DNA profiling is required, the
3 5 offender shall immediately submit a DNA sample.

3 6 6. The division of criminal investigation shall carry out
3 7 DNA profiling of submitted DNA samples pursuant to this
3 8 chapter.

3 9 Sec. 3. NEW SECTION. 81.3 ESTABLISHMENT OF DNA DATABASE
3 10 AND DNA DATABANK.

3 11 1. A state DNA database and a state DNA databank are
3 12 established under the control of the division of criminal
3 13 investigation, department of public safety. The division of
3 14 criminal investigation shall conduct DNA profiling of a DNA
3 15 sample submitted in accordance with this section.

3 16 2. A DNA sample shall be submitted, and the division of
3 17 criminal investigation shall store and maintain DNA records in
3 18 the DNA database and DNA databank for persons required to
3 19 submit a DNA sample.

3 20 3. A DNA sample may be submitted, and the division of
3 21 criminal investigation shall store and maintain DNA records in
3 22 the DNA database and DNA databank for any of the following:

3 23 a. Crime scene evidence and forensic casework.
3 24 b. A relative of a missing person.
3 25 c. An anonymous DNA profile used for forensic validation,
3 26 forensic protocol development, or quality control purposes, or
3 27 for the establishment of population statistics database.

3 28 4. A fingerprint record of a person required to submit a
3 29 DNA sample shall also be submitted to the division of criminal
3 30 investigation with the DNA sample to verify the identity of
3 31 the person required to submit a DNA sample.

3 32 Sec. 4. NEW SECTION. 81.4 COLLECTING, SUBMITTING,
3 33 ANALYZING, IDENTIFYING, AND STORING DNA SAMPLES AND DNA
3 34 RECORDS.

3 35 1. The division of criminal investigation shall adopt
4 1 rules for the collection, submission, analysis,
4 2 identification, storage, and disposition of DNA records.

4 3 2. A supervising agency having control, custody, or
4 4 jurisdiction over a person shall collect a DNA sample from a
4 5 person required to submit a DNA sample. The supervising
4 6 agency shall collect a DNA sample, upon admittance to the
4 7 pertinent institution or facility, of the person required to
4 8 submit a DNA sample or at a determined date and time set by
4 9 the supervising agency. If a person required to submit a DNA
4 10 sample is confined at the time a DNA sample is required, the
4 11 person shall submit a DNA sample as soon as practicable. If a
4 12 person required to submit a DNA sample is not confined after
4 13 the person is required to submit a DNA sample, the supervising
4 14 agency shall determine the date and time to collect the DNA
4 15 sample.

4 16 3. A person required to submit a DNA sample who refuses to
4 17 submit a DNA sample may be subject to contempt proceedings
4 18 pursuant to chapter 665 until the DNA sample is submitted.

4 19 4. The division of criminal investigation shall conduct
4 20 DNA profiling on a DNA sample or may contract with a private
4 21 entity to conduct the DNA profiling.

4 22 5. A supervising agency may assess a fee or surcharge
4 23 against a person required to submit a DNA sample.

4 24 Sec. 5. NEW SECTION. 81.5 CIVIL AND CRIMINAL LIABILITY
4 25 == LIMITATION.

4 26 A person who collects a DNA sample shall not be civilly or
4 27 criminally liable for the collection of the DNA sample if the
4 28 person performs the person's duties in good faith and in a
4 29 reasonable manner according to generally accepted medical or
4 30 other professional practices.

4 31 Sec. 6. NEW SECTION. 81.6 CRIMINAL OFFENSE.

4 32 A person who knowingly or intentionally does any of the

4 33 following commits an aggravated misdemeanor:

4 34 1. Discloses a DNA record to a person or agency that is
4 35 not authorized by the division of criminal investigation to
5 1 have access to the DNA record.

5 2 2. Uses or obtains a DNA record for a purpose other than
5 3 what is authorized under this chapter.

5 4 3. Alters or attempts to alter a DNA sample, falsifies the
5 5 source of a DNA sample, or materially alters a collection
5 6 container used to collect the DNA sample.

5 7 Sec. 7. NEW SECTION. 81.7 CONVICTION OR ARREST NOT
5 8 INVALIDATED.

5 9 The detention, arrest, or conviction of a person based upon
5 10 a DNA database match is not invalidated if it is determined
5 11 that the DNA sample or DNA profile was obtained or placed into
5 12 the DNA database by mistake or error.

5 13 Sec. 8. NEW SECTION. 81.8 CONFIDENTIAL RECORDS.

5 14 1. A DNA record shall be considered a confidential record
5 15 pursuant to section 22.7, subsection 9, unless disclosure is
5 16 authorized pursuant to this section.

5 17 2. Confidential DNA records under this section may be
5 18 released to the following agencies for official use:

5 19 a. Any criminal or juvenile justice agency as defined in
5 20 section 692.1.

5 21 b. The department of corrections.

5 22 c. Any other agency using the confidential record in its
5 23 official capacity.

5 24 3. The division of criminal investigation shall share the
5 25 DNA profile information with the appropriate federal agencies
5 26 for use in a national DNA database.

5 27 4. A criminal or juvenile justice agency as defined in
5 28 section 692.1 may publicly disclose a DNA profile match or
5 29 failed match.

5 30 5. A DNA record or other forensic information developed
5 31 pursuant to this chapter may be released to a grand jury or
5 32 other criminal, civil, or administrative proceeding. Such a
5 33 record or information may be released in the form of a
5 34 document filed with the court or administrative agency, or
5 35 released as part of a judicial or administrative proceeding.

6 1 Such a record or information may become part of a public
6 2 transcript or other public recording of such a proceeding.

6 3 6. A DNA record or other forensic information may be
6 4 released pursuant to a court order.

6 5 Sec. 9. NEW SECTION. 81.9 EXPUNGEMENT OF DNA RECORDS.

6 6 1. A person whose DNA record has been included in the DNA
6 7 database or DNA databank established pursuant to section 81.3
6 8 may request, in writing to the division of criminal
6 9 investigation, expungement of the DNA record from the DNA
6 10 database and DNA databank based upon the person's conviction,
6 11 adjudication, or civil commitment which caused the submission
6 12 of the DNA sample being reversed on appeal and the case
6 13 dismissed. The written request shall contain a certified copy
6 14 of the final court order reversing the conviction,
6 15 adjudication, or civil commitment, and a certified copy of the
6 16 dismissal, and any other information necessary to ascertain
6 17 the validity of the request.

6 18 2. The division of criminal investigation, upon receipt of
6 19 a written request that validates reversal on appeal of a
6 20 person's conviction, adjudication, or commitment, and
6 21 subsequent dismissal of the case, shall expunge all of the DNA
6 22 records and identifiable information of the person in the DNA
6 23 database and DNA databank. However, if the division of
6 24 criminal investigation determines that the person is otherwise
6 25 obligated to submit a DNA sample, the DNA records shall not be
6 26 expunged.

6 27 3. The division of criminal investigation is not required
6 28 to expunge or destroy a DNA record pursuant to this section,
6 29 if expungement or destruction of the DNA record would destroy
6 30 evidence related to another person.

6 31 Sec. 10. Section 229A.7, Code 2003, is amended by adding
6 32 the following new subsection:

6 33 NEW SUBSECTION. 5A. If the court or jury determines that
6 34 the respondent is a sexually violent predator, the court shall
6 35 order the respondent to submit a DNA sample for DNA profiling
7 1 pursuant to section 81.4.

7 2 Sec. 11. Section 232.52, Code Supplement 2003, is amended
7 3 by adding the following new subsection:

7 4 NEW SUBSECTION. 10. The court shall order a juvenile
7 5 adjudicated a delinquent for an offense that requires DNA
7 6 profiling under section 81.2 to submit a DNA sample for DNA
7 7 profiling pursuant to section 81.4.

7 8 Sec. 12. Section 669.14, Code Supplement 2003, is amended

7 9 by adding the following new subsection:

7 10 NEW SUBSECTION. 15. Any claim arising from or related to
7 11 the collection of a DNA sample for DNA profiling pursuant to
7 12 section 81.4 or a DNA profiling procedure performed by the
7 13 division of criminal investigation, department of public
7 14 safety.

7 15 Sec. 13. Section 802.2, Code 2003, is amended to read as
7 16 follows:

7 17 802.2 SEXUAL ABUSE == FIRST, SECOND, OR THIRD DEGREE.

7 18 1. An information or indictment for sexual abuse in the
7 19 first, second, or third degree committed on or with a person
7 20 who is under the age of eighteen years shall be found within
7 21 ten years after the person upon whom the offense is committed
7 22 attains eighteen years of age, or if the identity of the
7 23 person against whom the information or indictment is sought is
7 24 established through the use of a DNA profile, an information
7 25 or indictment shall be found within three years from the date
7 26 the identity of the person is identified by the person's DNA
7 27 profile, whichever is later.

7 28 2. An information or indictment for any other sexual abuse
7 29 in the first, second, or third degree shall be found within
7 30 ten years after its commission, or if the identity of the
7 31 person against whom the information or indictment is sought is
7 32 established through the use of a DNA profile, an information
7 33 or indictment shall be found within three years from the date
7 34 the identity of the person is identified by the person's DNA
7 35 profile, whichever is later.

8 1 Sec. 14. Section 901.5, subsection 8A, Code Supplement
8 2 2003, is amended to read as follows:

8 3 8A. a. The court shall order DNA profiling of a defendant
8 4 convicted of an offense that requires profiling under section
8 5 ~~13.10 81.2.~~

8 6 b. Notwithstanding section ~~13.10 81.2~~, the court may order
8 7 the defendant to provide a ~~physical specimen~~ DNA sample to be
8 8 submitted for DNA profiling if appropriate. In determining
8 9 the appropriateness of ordering DNA profiling, the court shall
8 10 consider the deterrent effect of DNA profiling, the likelihood
8 11 of repeated offenses by the defendant, and the seriousness of
8 12 the offense.

8 13 Sec. 15. Section 906.4, unnumbered paragraph 3, Code
8 14 Supplement 2003, is amended to read as follows:

8 15 Notwithstanding section ~~13.10 81.2~~, the board may order the
8 16 defendant to provide a ~~physical specimen~~ DNA sample to be
8 17 submitted for DNA profiling as a condition of parole or work
8 18 release, if appropriate. In determining the appropriateness
8 19 of ordering DNA profiling, the board shall consider the
8 20 deterrent effect of DNA profiling, the likelihood of repeated
8 21 offenses by the defendant, and the seriousness of the offense.

8 22 Sec. 16. 2002 Iowa Acts, chapter 1080, is repealed.

8 23 Sec. 17. Section 13.10, Code 2003, is repealed.

8 24 Sec. 18. PERSONS REQUIRED TO SUBMIT A DNA SAMPLE PRIOR TO
8 25 EFFECTIVE DATE OF THIS DIVISION OF THIS ACT. A person
8 26 convicted, adjudicated a delinquent, civilly committed as a
8 27 sexually violent predator, or found not guilty by reason of
8 28 insanity, prior to the effective date of this division of this
8 29 Act, who would otherwise be required to submit a DNA sample
8 30 under this division of this Act, and who is under the custody,
8 31 control, or jurisdiction of a supervising agency, shall submit
8 32 a DNA sample prior to being released from the supervising
8 33 agency's custody, control, or jurisdiction.

8 34 Sec. 19. EFFECTIVE DATE. This division of this Act, being
8 35 deemed of immediate importance, takes effect upon enactment.

9 1 DIVISION II

9 2 Sec. 20. Section 81.2, subsection 1, as enacted in
9 3 division I of this Act, is amended by striking the subsection
9 4 and inserting in lieu thereof the following:

9 5 1. A person against whom a judgment or conviction for a
9 6 felony has been entered shall be required to submit a DNA
9 7 sample for DNA profiling pursuant to section 81.4.

9 8 Sec. 21. CONTINGENT EFFECTIVE DATE. The effective date of
9 9 this division of this Act shall be the later of July 1, 2004,
9 10 or on the date when sufficient funds have been appropriated or
9 11 are first received to pay the costs of conducting DNA
9 12 profiling on DNA samples submitted by all convicted felons.
9 13 The commissioner of public safety shall notify the Code editor
9 14 when sufficient funds have been appropriated or are first
9 15 received to pay the costs of complying with this division of
9 16 this Act.

9 17 EXPLANATION

9 18 This bill relates to requiring certain persons to submit a
9 19 DNA sample for DNA profiling.

9 20 DIVISION I = The division moves Code section 13.10 to new
9 21 Code section 81.2 and modifies the section. The division
9 22 requires a person civilly committed as a sexually violent
9 23 predator to provide a DNA sample for DNA profiling prior to
9 24 the person's discharge or placement in a transitional release
9 25 program. A juvenile who has been adjudicated a delinquent of
9 26 a criminal offense requiring a DNA sample under new Code
9 27 section 81.2 shall also submit a DNA sample for DNA profiling
9 28 under the division. The division also requires a DNA sample
9 29 from a person found not guilty by reason of insanity of a
9 30 criminal offense requiring a DNA sample under new Code section
9 31 81.2. Current law provides that only a person convicted of a
9 32 criminal offense listed in Code section 13.10 is required to
9 33 provide a DNA sample for DNA profiling.

9 34 The division establishes, in the division of criminal
9 35 investigation, department of public safety, a state DNA
10 1 database for storage of DNA profiles and records and a state
10 2 DNA databank for storage of DNA samples. The division defines
10 3 "DNA sample" to mean a biological sample provided by any
10 4 person required to submit a DNA sample or a biological sample
10 5 submitted for any other permissible purpose. The division
10 6 defines "DNA profile" to mean the objective form of the
10 7 results of the DNA analysis performed on the DNA sample.

10 8 The division provides that a supervising agency with
10 9 custody, control, or jurisdiction over a person required to
10 10 submit a DNA sample shall collect the sample. The division
10 11 provides that the supervising agency may charge a collection
10 12 fee against the person giving the DNA sample. A person
10 13 required to submit a DNA sample who refuses to provide a
10 14 sample is subject to contempt proceedings. The division
10 15 provides that a person collecting the DNA sample is immune
10 16 from civil or criminal liability if the person collects the
10 17 sample in a reasonable manner according to generally accepted
10 18 medical or other professional practices.

10 19 The division provides that the division of criminal
10 20 investigation shall perform the DNA profiling of the DNA
10 21 sample or may contract with a private entity to conduct such
10 22 profiling.

10 23 The division provides that a DNA record is a confidential
10 24 record pursuant to Code section 22.7, subsection 9. However,
10 25 the division provides that a DNA record may be disclosed to a
10 26 criminal and juvenile justice agency, the department of
10 27 corrections, the federal government for a national database,
10 28 and any other agency using the confidential record in its
10 29 official capacity. A law enforcement agency may also publicly
10 30 disclose a DNA profile match or failed match. The division
10 31 provides that a DNA record may be disclosed pursuant to a
10 32 criminal, civil, or administrative proceeding, or by court
10 33 order.

10 34 The division provides that a person who knowingly or
10 35 intentionally discloses, uses, or obtains a DNA sample without
11 1 authorization, or who alters a DNA sample or sample collection
11 2 container, or who falsifies the source of a DNA sample commits
11 3 an aggravated misdemeanor.

11 4 The division provides that any detention, arrest, or
11 5 conviction based upon a DNA database match is not invalidated
11 6 if it is later determined that the DNA profile was obtained or
11 7 placed into the DNA database by mistake or error.

11 8 The division provides that if a person who is required to
11 9 submit a DNA sample has the person's conviction, adjudication,
11 10 or civil commitment subsequently reversed on appeal, the
11 11 person may file a written request with the division of
11 12 criminal investigation requesting that all DNA records be
11 13 expunged. Upon receipt of a certified copy of the order
11 14 reversing the conviction, adjudication, or civil commitment,
11 15 and a certified copy of the order dismissing the case, the DNA
11 16 records shall be expunged unless the destruction of the
11 17 records would destroy DNA evidence related to another person.

11 18 The division provides that any claim arising or related to
11 19 the collection of a DNA sample shall proceed under the state
11 20 tort claims Act in Code chapter 669.

11 21 The division also requires a person convicted, adjudicated
11 22 as delinquent, civilly committed as a sexually violent
11 23 predator, or found not guilty by reason of insanity, prior to
11 24 the effective date of the division, who would otherwise be
11 25 required to submit a DNA sample under the division, and who is
11 26 under the custody, control, or jurisdiction of a supervising
11 27 agency, to submit a DNA sample prior to being released from
11 28 the supervising agency's custody, control, or jurisdiction.

11 29 The division modifies the statute of limitations for any
11 30 sexual abuse in the first, second, or third degree by allowing

11 31 a case to be brought against a person within three years from
11 32 the date the identity of the person is identified by the
11 33 person's DNA profile. Current law provides that a sexual
11 34 abuse case must be prosecuted within 10 years of the
11 35 commission of the crime or within 10 years of the victim
12 1 attaining the age of 18.

12 2 The division repeals 2002 Acts, chapter 1080, which
12 3 requires all felons to submit a DNA sample for DNA profiling
12 4 upon sufficient funding because the law in the 2002 Acts does
12 5 not conform with the changes in this division and division II.

12 6 Division I, being deemed of immediate importance, takes
12 7 effect upon enactment.

12 8 Division II = The division provides that all convicted
12 9 felons shall submit a DNA sample for DNA profiling upon the
12 10 appropriation of sufficient funds to cover the expense of
12 11 collecting and conducting DNA profiling on all convicted
12 12 felons.

12 13 Division II becomes effective on the later of July 1, 2004,
12 14 or on the date when sufficient funds have been appropriated or
12 15 are first received to pay the costs of conducting DNA
12 16 profiling on DNA samples submitted by all convicted felons,
12 17 whichever is sooner.

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